

STATE OF MICHIGAN  
COURT OF APPEALS

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MYSOON MORTADA,

Plaintiff-Appellant,

v

SERGE OSTROVETZ,

Defendant-Appellee.

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UNPUBLISHED

August 15, 2006

No. 268654

Wayne Circuit Court

LC No. 04-417212-NO

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability case. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured when she fell while descending some basement stairs in a home owned by defendant and leased to plaintiff's mother. Plaintiff was unable to recall how the fall occurred. She testified at her deposition that water would leak from outside and down the stairs when it rained, but was unaware whether there had been any precipitation on the day she fell, and she acknowledged that she did not look at the stairs to ascertain if water was present at any time that day. Plaintiff's mother averred in an affidavit that she observed water in the area plaintiff fell and that plaintiff's pants were wet. Although plaintiff testified that her mother told her that her foot was wet after the fall, that observation is not reflected in the mother's affidavit.

Defendant filed a motion for summary disposition, challenging plaintiff's ability to establish causation. The trial court determined that plaintiff's theory that she slipped on water was based on speculation and granted defendant's motion. On appeal, plaintiff argues that the requisite causal connection is not based on mere speculation, but rather is supported by expert and lay testimony that adequately established a sequence of cause and effect.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

"To establish a *prima facie* case of negligence, a plaintiff must be able to prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3)

causation, and (4) damages.” *Haliw v City of Sterling Hts*, 464 Mich 297, 309-310; 627 NW2d 581 (2001). To establish causation, a plaintiff must show both cause in fact and legal (or proximate) cause. *Id.* at 310. Causation may be established by circumstantial evidence, but such proof “must facilitate reasonable inferences of causation, not mere speculation.” *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). This Court has explained that pursuant to *Skinner*, “a plaintiff is not required to negate all other reasonable causation theories. Rather, the plaintiff must present substantial evidence from which the jury may conclude that more likely than not, but for the defendant’s conduct, the plaintiff’s injuries would not have occurred.” *Wilson v Alpena Co Rd Comm*, 263 Mich App 141, 150; 687 NW2d 380 (2004), *aff’d* 474 Mich 161 (2006).

On appeal, plaintiff relies in part on her expert’s observations of defects in the construction of the stairway. However, the expert’s report was first submitted with plaintiff’s motion for reconsideration. Because this report was not submitted to the trial court before the court granted defendant’s motion, we do not consider it in reviewing whether the trial court erred in granting the motion. See *Maiden, supra* at 126 n 9.

Plaintiff compares the present proofs concerning causation to those in *Wilson, supra*. In that case, the plaintiff was riding her bicycle and attempting to avoid potholes. She felt the front tire go into a hole and flew over the handlebars. Although she walked home, she was unable to recall doing so. She remembered waking up in the hospital. She admitted that she did not see a pothole and could not remember where the accident occurred. However, she noticed that the tire of her bicycle was bent. *Id.* at 143. Although the trial court reasoned that a punctured tire rather than a pothole may have caused the accident, this Court disagreed and concluded that the evidence was sufficient to create an issue of fact whether the pothole contributed to the accident.

We conclude that plaintiff’s proofs failed to create an issue of fact concerning causation. Although the plaintiff in *Wilson* did not see a pothole, she felt her bicycle tire go into one. Here, plaintiff did not recall a sensation of slipping that would make this case comparable to *Wilson*. Cf. *Andrews v K Mart Corp*, 181 Mich App 666, 669; 450 NW2d 27 (1989). Evidence that there may have been water in the area is inadequate to conclude that water caused plaintiff’s fall. See *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1991).

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder